THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CRIMINAL REVISION CASE No.1344 of 2004

Date:13.03.2014

Between:

M. Dinesh Kumar

..... Petitioner.

AND

The State of A.P., rep by its Public Prosecutor, High Court of A.P., Hyderabad.

.....Respondent.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CRIMINAL REVISION CASE No.1344 of 2004

ORDER:

This revision is preferred against judgment dated 03-11-2007 in Crl.A.No.13/2007 on the file of VII Additional District & Sessions Judge, Madanapalle whereunder judgment dated 18-01-2007 in C.C.No.14/2003 on the file of Judicial First Class Magistrate, Thamballapalli was confirmed.

2. Brief facts leading to filing of this revision are as follows:-

Sub-Inspector of Police, Mulakalacheruvu filed charge sheet against revision petitioner alleging that on 22-8-2002, at about 6.00 P.M, accused being rider of Suzuki motor cycle bearing No.TN 23/S.6047 along with two pillion riders, drove the vehicle at a high speed and lost control of the same at Peddapalyam gate of Muulakalacheruvu Mandal and dashed against Kamalamma who sat on Rachabanda on road side with a child of 1 ½ years, and Kamalamma sustained severe bleeding injuries and later Kamalamma succumbed to injuries on the same day at 7:00 P.M while undergoing treatment. On a report of P.W.1, police registered Crime No.68/2002 and investigation revealed that the accused is liable for punishment for the offences under Sections 304-A, 337, 338, 279 IPC and Section 134 (a) (b) read with 187 of the A.P Motor Vehicles Act. On these allegations, trial Court examined 13 witnesses and marked 12 documents on behalf of prosecution and marked one document on behalf of accused and on an over all consideration of oral and documentary evidence, found the revision petitioner guilty for offences under Sections 304-A, 338 & 279 IPC and sentenced him to suffer six months imprisonment with a fine of Rs.100/- for the offence under Section 304-A IPC, three months imprisonment with a fine of Rs.100/- for the offence under

Section 338 IPC and fine of Rs.500/- for the offence under Section 279 IPC. Aggrieved by the conviction and sentence, he preferred appeal to the Court of Sessions, Chittoor and VII Additional District & Sessions Judge, Madanapalli on a reappraisal of the evidence, confirmed the conviction and sentence. Now aggrieved by the same, present revision is preferred.

3. Heard both sides.

4. Advocate for revision petitioner submitted that trial Court relied only on the highly interested testimonies of P.Ws.1 to 7. He further submitted that investigating officer has not conducted any identification parade and in the absence of identification, the conviction cannot be sustained. He further submitted that accused also received injuries in the same accident, but the trial Court failed to consider this aspect. On the other hand, learned Public Prosecutor submitted that both trial Court and appellate Court have rightly convicted the revision petitioner and that there are no grounds to interfere with the concurrent findings.

5. Now the point that would arise for my consideration is whether the order of the Court below is legal, proper and correct?

6. **Point:**-According to prosecution, on 22-08-2002, at

about 6:00 P.M., while deceased Kamalamma was at Rachabanda of the village on the road side with a child of 1 ½ year old by name Varun Kumar, accused while going on two wheeler motor cycle with two pillion riders, drove his vehicle at a high speed, lost control of it and dashed her. To prove the same, relative of deceased is examined as P.W.1 who lodged the complaint with police.

He deposed that on the date of accident, at about 5:30 P.M., he left the village with deceased-Kamalamma and injured Varun Kumar and they were waiting for a bus to go to Mulakalacheruvu and the deceased sat on a pial situated on the southern side of Madanapalle – Kadiri road with the injured Varun Kumar and then a motor cycle from Madanapalle side proceeding towards Ananthapur came at a high speed with two pillion riders and hit the deceased sitting on the pial due to which, both deceased and Varun Kumar sustained injuries.

He deposed that both accused and the pillion riders also fell down and sustained injuries and that the motor cycle was damaged. P.W.2 is father of the injured Varun Kumar and he is not an eye-witness. P.W.4 is a woman running tea stall near the scene of offence and she supported the evidence of P.W.1. P.W.5 is another eye-witness, but he deposed that he was not present at the time of accident and that he kept his cycle near the place of accident and by the time he returned back, his cycle is damaged due to hit by a motor cycle. The other witnesses are panch

witnesses, Doctors, motor vehicle inspectors and investigating officers. The main contention of the revision petitioner is that identification parade is not conducted and the accused is only identified in the Court during evidence. Here P.Ws.1 & 4 are independent persons and they have no prior acquaintance with the accused. They cannot have any motive to falsely implicate the revision petitioner. The revision petitioner has not disputed that he was not the driver of the two wheeler that involved in the accident on account of which, one person died and a small boy sustained injuries. Both these objections are also raised before the trial Court and appellate Court and both Courts, after referring to the evidence on record disallowed the objection and I do not find any wrong in the findings of the trial Court and appellate Court. Both the Courts have elaborately discussed the evidence on record with reference to all the objections raised on behalf of the revision petitioner and I do not find any wrong appreciation of evidence either by trial Court or appellate Court and both the judgments are well considered judgments and that there are no grounds to interfere with the concurrent findings of the Courts below with regard to conviction.

7. Now coming to the sentence part, Advocate for revision petitioner submitted that accused also received injuries in the same accident and the same may be

considered and to reduce the sentence reasonably. He submitted that the revision petitioner was in jail for about five days and the same may be treated as punishment, but the request of the revision petitioner cannot be accepted to treat the five days imprisonment as punishment for an offence under Section 304-A IPC cannot be accepted. But considering the facts of the case, age of the accused and the fact that he also received injuries, I feel that six months imprisonment can be reduced to three months. With this modification, the revision is liable to the dismissed.

8. For the above reasons, the revision is dismissed confirming the conviction, but the sentence of imprisonment for the offence under Section 304-A IPC is reduced to three months while confirming fine and sentence for the offence under Section 338 IPC and 279 IPC.

9. The trial Court shall take steps for apprehension of accused for undergoing unexpired portion of the sentence.

10. As a sequel, miscellaneous petitions if any pending in this Criminal Revision Case shall stand dismissed.

JUSTICE S. RAVI KUMAR

Date:13.03.2014

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